

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NYCOMED US INC.)	
Opposer,)	Opposition No. _____
)	
v.)	Mark: ROSALOX
DROSSAPHARM AG)	
Applicant)	Serial No.: 77-234,542
)	

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451, on November 13, 2008.

By: *Lisa Joyce*
Name: Lisa Joyce

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Commissioner:

We are transmitting herewith the attached:

- ☒ Return postcard.
- ☒ Transmittal Sheet containing Certificate Under 37 C.F.R. 1.8
- ☒ Notice of Opposition
- ☒ **Please charge Deposit Account 50-0996 (NYCO.068TB) \$300.00 in payment of the Filing Fee.** Authority is given to charge/credit additional fees/overages to complete this filing.

CRAWFORD MAUNU PLLC
1150 Northland Drive, Suite 100
St. Paul, MN 55120
(651) 259-2302

By: *Linda M. Byrne*
Name: Linda M. Byrne
Reg. No. 32,404



11-17-2008

NYCO.068TB

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NYCOMED US INC.

Opposer,

v.

DROSSAPHARM AG

Applicant

Opposition No. _____

Mark: ROSALOX

Serial No.: 77-234,542

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NOTICE OF OPPOSITION

NYCOMED US INC., a New York corporation, located and doing business at 60 Baylis Road, Melville, New York 11747, (hereinafter "Opposer"), believes it would be damaged and injured by registration of the mark ROSALOX for a "pharmaceutical preparation for use in dermatology" in International Class 5, as shown in Application Serial No. 77-234,542, filed on July 20, 2007, by Drossapharm AG (hereinafter "Applicant"), published for opposition on July 22, 2008.

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Opposer alleges, solely for the purpose of this proceeding, as grounds for Opposition, the following:

1. Applicant seeks to register ROSALOX for a "pharmaceutical preparation for use in dermatology" in the United States in International Class 5. The U.S. application claims priority from a corresponding Swiss registration for ROSALOX (Reg. No. 360499).



11-17-2008

2. Opposer is a leading producer of high-quality pharmaceutical products, including dermatological products.

3. Upon information and belief, Applicant has not used the ROSALOX trademark anywhere in the United States, or in commerce, prior to the Applicant's filing date.

4. Upon information and belief, Applicant is not currently using the ROSALOX trademark anywhere in the United States, or in commerce.

5. Opposer is the owner of U.S. Trademark Registration No. 2,800,890 for ROSULA for "medicated skin treatment products, namely, creams, gels and cleansers for treatment of acne, rosacea and other skin conditions" in International Class 5. Opposer first used this mark in the United States for these goods at least as early as January 2003. Opposer's registration is valid and subsisting.

6. Opposer's ROSULA mark is inherently distinctive.

7. Upon information and belief, Applicant's goods are or will be offered to the same class of consumers as those that receive Opposer's goods, and are closely related to or directly competitive with those offered by Opposer.

8. By virtue of Opposer's efforts, and the expenditure of considerable sums for promotional activities, and by virtue of the excellence of Opposer's goods, Opposer has gained a valuable reputation for its mark ROSULA.

9. Applicant's asserted mark "so resembles a mark . . . previously used in the United States by another and not abandoned, as to be likely, when applied to the goods of the Applicant, to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. Section 1052(d).

10. Under the "doctrine of greater care," Applicant had a duty to adopt a trademark for its aforementioned products that is clearly distinguishable from Opposer's trademark for related pharmaceutical products.

11. Upon information and belief, Applicant adopted its ROSALOX mark and applied to register the mark with actual prior notice of Opposer's trademark ROSULA.

12. Applicant adopted the ROSALOX term and applied to register the mark without the approval, authorization or acquiescence of Opposer.

13. If the Applicant is permitted to use and register its mark, confusion in the trade resulting in damage and injury to Opposer would be caused and would result by reason of the substantial similarity between Applicant's ROSALOX mark and Opposer's ROSULA mark. Furthermore, any objection or fault found with Applicant's ROSALOX goods would necessarily reflect on and seriously injure the reputation that Opposer has established through its use of its ROSULA mark.

14. If Applicant is granted registration of the mark herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its alleged mark. Such registration would be a source of further damage and injury to Opposer.

15. For the reasons set forth in the foregoing paragraphs, Applicant is not entitled to register its mark, and the application should be denied in accordance with Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d).

WHEREFORE, Opposer requests that Application Serial No. 77/234,542 for registration of the alleged mark ROSALOX be refused and denied, and that this opposition be sustained in favor of Opposer.

Please deduct the required filing fee of \$300.00 from our Deposit Account 500996 (NYCO.068TB) for this Notice of Opposition. Authority is given to charge additional fees to complete this filing.

Opposer is serving a copy of this Notice of Opposition on Applicant and on Applicant's Filing Correspondent, as set forth in the below Certificate of Service.

Please direct all correspondence to the attention of:

Linda M. Byrne
Crawford Maunu PLLC
1150 Northland Drive, Suite 100
St. Paul, MN 55120
651-259-2302 telephone
651-686-7111 fax
Lbyrne@ip-firm.com

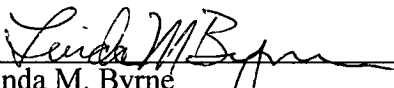
The Opposer appoints Linda Byrne, Robert Crawford, and Eric Curtin of the firm of CRAWFORD MAUNU PLLC as its attorneys to prosecute this opposition and to transact all business in the Patent and Trademark Office connected therewith.

Respectfully submitted,

NYCOMED US INC.

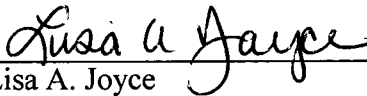
By Its Attorneys

Date: November 13, 2008


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E-Mail: Lbyrne@ip-firm.com

CERTIFICATE OF MAILING

I hereby certify that this NOTICE OF OPPOSITION is being deposited with the United States Postal Service, first class mail, in an envelope addressed to Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451 on this 13th day of November, 2008.



Lisa A. Joyce

CERTIFICATE OF SERVICE

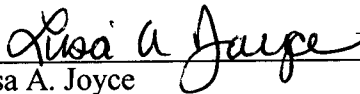
I hereby certify that this NOTICE OF OPPOSITION is being deposited with the United States Postal Service, first class mail, in two envelopes addressed to Applicant and Applicant's attorney:

Drossapharm AG
Birsweg 1
Arlesheim
Switzerland

and

Richard M. Goldberg
Goldberg Patent Law Office
25 E. Salem Street, Suite 419
Hackensack, NJ 07601-7416

on this 13th day of November, 2008.



Lisa A. Joyce